

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 Before The Honorable Laurel Beeler, Magistrate Judge
4

5 UNITED STATE OF AMERICA,)
6 Plaintiff,)
7 vs.) No. CR 20-00249-RS-1
8 ANDRADE,)
9 Defendant.)
10 _____)

11 San Francisco, California
12 Thursday, December 14, 2023

13 TRANSCRIPT OF THE OFFICIAL ELECTRONIC
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1 Thursday, December 14, 2023

10:14 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling criminal action 20-249, U.S.A.
5 versus Rowland Marcus Andrade.

6 Counsel, if you could please state your appearances for
7 the record.

8 MR. HIGHSMITH: Good morning, your Honor. Chris
9 Highsmith and Dave Ward for the United States.

10 MR. SHEPARD: And good morning, your Honor.
11 Michael Shepard, Kerrie Dent and Cindy Diamond remotely, on
12 behalf of Mr. Andrade. Mr. Andrade is also appearing
13 remotely. He consents to proceed in that fashion, and
14 appreciates the Court's willingness not to make him travel
15 for this appearance.

16 THE COURT: Okay. It's a little -- you wonder --
17 there's a kind of new guidance. It's a little -- I'm
18 comfortable, given the nature of the proceeding, given that
19 you couldn't make this appearance, I feel like they could
20 slide in under the rules that way.

21 MR. SHEPARD: Thank you.

22 THE COURT: Okay. So thanks for the updated
23 briefing, and I'm moving back to my original order and
24 briefing. So should we just go through the issues one by
25 one? And why don't you -- why don't we start with what

1 you'd like to talk about, and we can just talk it out with
2 the Government.

3 MR. SHEPARD: Sure, your Honor. Thank you. I
4 guess I would start with, here we are again. I've lost
5 track of how many arguments and briefs we've had, seeking
6 what the Court ordered in April, and we need to -- we first
7 requested (Zoom interference).

8 THE COURT: (Indiscernible.) Somebody might just
9 be muting themselves on Zoom (indiscernible) that noise.

10 The one issue that we didn't deal with when we first
11 addressed the issue of case law and granted the Government
12 didn't raise it, and I don't think that means that they
13 can't raise it -- is this issue of what's rightfully in
14 their possession.

15 When you search -- when you seize information, you
16 know, in the -- in the device context, you're entitled to
17 seize the information that's authorized, and no more than
18 that, and so asking them to produce something that they're
19 not really authorized to retain is seemingly problematic,
20 and then, just to put us back on the same page, I did not --
21 and, as you know from the supplemental order I issued a
22 couple weeks ago, I did not anticipate that the Government
23 would be returning the device, but, in any event, assumed
24 that it would be retaining an image, just to avoid
25 contentious spoliation, as I called in the order.

1 So, while I appreciate -- they said they would do
2 something. They didn't, and now they have a different
3 argument. I'm just not that persuaded that that's enough of
4 a ground to say, "Give it over," and then the question that
5 I really wanted us to focus on, given that, which I already
6 said, what are we going to do now?

7 And I did think that at least, at minimum, if they
8 return an image, you can issue a third-party subpoena, and
9 we could go at it that way, and have whatever objections
10 raised, and so that's --

11 MR. SHEPARD: Well, I --

12 THE COURT: -- that's where I was on that piece,
13 and then, of course, there's the sufficiency piece, but --
14 all right. So you tell me what you wanted to --

15 MR. SHEPARD: Look. I appreciate the Court's
16 thoughts about that, and that's why we did engage initially
17 on the argument. I do think, though, this is a little
18 different than just the Government can't give over what it
19 doesn't lawfully have, because the Balwani (phonetic) case
20 says you can't retain it, and the Balwani case also said you
21 couldn't look at it, and they've done both. They -- they --
22 remember, they first denied but then ultimately had to
23 concede that they did use for their own purposes the portion
24 of the device that went beyond what they were lawfully
25 entitled to have.

1 So the notion that they can have access to it -- and
2 that's fine, but -- but when it comes for us, the Court
3 having ordered, determined, that it's material to the
4 preparation of our defense -- when it comes time for us to
5 get it, all of a sudden, Balwani says we can't have it?
6 Well, they've been ignoring Balwani for over a year.

7 So I appreciate the Court's concern about that issue,
8 and that's why we engaged on the issue -- in addition to
9 making the point that they shouldn't be allowed to make the
10 argument, we engaged on the issue, and we said, "Here are
11 some possibilities," one of which is, I think, where the
12 Court ultimately came out, which is retain the device,
13 retain an image of the device --

14 THE COURT: Or at least retain an image of the
15 device --

16 MR. SHEPARD: Yes.

17 THE COURT: -- at least retain an image of the
18 device..

19 MR. SHEPARD: Return -- return the device to Mr.
20 Levin --

21 THE COURT: Throughout the time of the case.

22 MR. SHEPARD: -- in a way that we can subpoena it,
23 and then, if Mr. Levin has an objection --

24 THE COURT: We deal with it.

25 MR. SHEPARD: -- the Court can address -- yes. So

1 I think we've -- we've tracked that, and we appreciate the
2 Court's order that at least they should retain an image of
3 the device. They should return it to Mr. Levin. That's
4 where it has gotten --

5 THE COURT: Well, yes. At least return an image
6 to Mr. Levin.

7 MR. SHEPARD: Yes.

8 THE COURT: If they decided they did want to
9 return the device to Mr. Levin, that's fine, too. I think,
10 just for safety, that's only -- retain an image of it
11 through the pendency of this case.

12 MR. SHEPARD: That's where it gets a little more
13 complicated, your Honor.

14 THE COURT: Okay.

15 MR. SHEPARD: The first complication is -- and, as
16 we noted in the briefing, it took multiple attempts to get
17 this information out of the Government, but, in response to
18 the Court's order, we find this. The person they identify
19 as being Levin's lawyer, when we contacted that person, said
20 he was not Levin's lawyer, did not know the device, was not
21 Levin's lawyer.

22 Now, that doesn't mean the Government didn't think he
23 was Levin's lawyer, but, whatever. At this point, that
24 isn't advancing the ball, because the man who they say is
25 Levin's lawyer says to us he's not Levin's lawyer. So we're

1 not getting anywhere.

2 THE COURT: Well, I mean, presumably, you could
3 issue a third-party subpoena. You could serve Levin.
4 Regardless of whether the device is returned or remains in
5 that -- the Bureau's custody, he has an interest in it. He
6 can respond or not as he chooses. If it's unopposed, it's
7 unopposed. Boom. I mean, so it's not as if you're without
8 remedy.

9 MR. SHEPARD: So we have obtained a subpoena for
10 Mr. Levin --

11 THE COURT: Okay.

12 MR. SHEPARD: -- but so far we've been not -- we
13 have not been able to locate Mr. Levin to serve him with a
14 subpoena. We don't know whether he's in the United States
15 or not, and ultimately, therefore, I expect what's going to
16 happen is the Court is going to be left with the issue of
17 what the Court can do in terms of getting us this device
18 that the Court has already acknowledged is material to the
19 preparation of --

20 THE COURT: I assume -- assume, if the device,
21 slash, image is returned to Mr. Levin, the -- I could ask
22 the Government to provide documentation of that, if it's
23 able to accomplish that. Either it can or it can't. And
24 then -- and that way, presumably, you'd have access to Mr.
25 Levin, and would be able to serve the subpoena, and we could

1 go from there.

2 MR. SHEPARD: Unless he is not in the United
3 States.

4 THE COURT: In which case, I -- I haven't thought
5 it out that far with the discovery. If it would -- I --
6 I -- I don't know exactly how it should go. If they
7 exercise the diligence to obtain him, to obtain, you know,
8 the equivalent of service under, you know, kind of a Rule --
9 Civil Rule 4-type analysis, service by alternate means, you
10 know, I haven't thought it out in this particular case, but
11 it's equivalent, because it's a third-party subpoena.

12 There might be a remedy that we could fashion that
13 would be -- in the form of a lack of objection and getting
14 you the information under a protective order, maybe
15 attorneys' eyes. I don't know what -- I'm just suggesting
16 that there are remedies that could be pursued, short of
17 asking the Government to do what I'm not going to do, which
18 is ask it to exceed -- to give you something that -- that
19 they don't have the ability to give you absent involving Mr.
20 Levin in the process.

21 MR. SHEPARD: Understood. And I think the one
22 thing that we need to work out about that -- and I say that
23 in light of the history of the number of efforts we had to
24 go through to try to find out information about "Are you --
25 are you keeping an image in the phone? Are you" --

1 THE COURT: Well, we'll make sure all that is in
2 an order. I -- you know, I'm not --

3 MR. SHEPARD: Right. We just need to be --

4 THE COURT: You need to preserve the status quo.

5 MR. SHEPARD: We need to have the Government's
6 assistance in making sure that if we are going to down the
7 road of we're entitled to issue Levin a subpoena, so that he
8 has some obligation in the event they are able to find him.
9 I don't know that they will be any more successful --

10 THE COURT: Well, we'll -- we'll -- we'll deal
11 with all of that when we deal with it in context.

12 MR. SHEPARD: Yes.

13 THE COURT: I mean, I'm sure -- and I just like --
14 I still am seeing Mr. Weingarten here with the pained look
15 on his face. I'm starting to feel that all of this exceeds
16 the bounds of what's fairly producible under any iteration
17 of any set of the criminal discovery rules, and once we get
18 to the phone issue, as long as the Government is complying
19 with its constitutional obligations, as you know I've said
20 before, why do you care? And we'll just go through the
21 process with Mr. Levin, however --

22 MR. SHEPARD: As long as there's a process --

23 THE COURT: We'll figure it out. There's a
24 process.

25 MR. SHEPARD: -- we're not going to lose it in --

1 we're not going to lose our chance to get the phone.

2 THE COURT: No, no, no. The Government might say
3 it's inappropriate, and I think I'll probably say retain at
4 least an image, if you're able to return it, give
5 documentation of the return in aid of this process. You can
6 file whatever objections, obviously, you want along the way,
7 to whatever is going on. If we could just survive
8 discovery, I think we'll all be happy here.

9 Okay. All right. So is that what you want to say on
10 the Levin image, slash, phone issue?

11 MR. SHEPARD: Yes. On the question of the return
12 of the phone and that sort of stuff, that's what I have to
13 say. Yes.

14 THE COURT: Okay. Let's let the Government -- we
15 might as well just comment back and forth on the issues.
16 Why don't you let me know (indiscernible).

17 MR. HIGHSMITH: Thank you. Very briefly, on the
18 characterization that we're at fault for not raising the
19 issue, I don't think so. I don't think so, your Honor. We
20 have -- we handed over to them, the responsive material.
21 That was what was responsive. They may not like what the
22 FBI pulled out of the phone, but that's what was given to
23 them.

24 THE COURT: I also think that just -- you're not
25 charged with (indiscernible) things all the time along the

1 way, and you can't give over things that you're not
2 constitutionally entitled to do.

3 MR. HIGHSMITH: Thank you.

4 THE COURT: So I think it's just fine.

5 MR. HIGHSMITH: Okay. Thank you. The law is very
6 clear.

7 THE COURT: No, I -- I agree with you. I agree
8 with you. And so that's that issue. Was there anything
9 else you wanted to about the Levin phone/image, and then
10 we'll let Mr. --

11 MR. HIGHSMITH: I would just ask that you -- in
12 terms of the image, I would just ask that you order it SDNY
13 for FBI's New York field office, and not my office --

14 THE COURT: Yes. Okay. Got it.

15 MR. HIGHSMITH: -- because I cannot command SDNY
16 or the New York field office.

17 THE COURT: Okay. That's fine.

18 MR. HIGHSMITH: I would appreciate that.

19 THE COURT: I'll figure out something.

20 MR. HIGHSMITH: And then, you know, he can issue
21 whatever subpoena he wants, but that's not -- that's not
22 our -- I need to stay away from that, because I'm not
23 allowed to hand over material that I can't retain. So --

24 THE COURT: Right, although we could do it -- we
25 could come up with a process to manage it through Mr. Levin,

1 however that happens. It's not you. I just am -- the
2 retaining of the image is just in case there's some kind of
3 spoliation issue, and I -- it -- so that -- don't -- it will
4 all go to Mr. Levin, not --

5 MR. HIGHSMITH: I think we're on the same page,
6 your Honor.

7 THE COURT: Okay.

8 MR. HIGHSMITH: I just can't be a part of --

9 THE COURT: I understand.

10 MR. HIGHSMITH: -- handing over evidence to
11 somebody that I'm not allowed to obtain.

12 THE COURT: No, I appreciate that. We'll sort it
13 out.

14 MR. HIGHSMITH: Thank you.

15 THE COURT: Okay. The next issue, Mr. Shepard.

16 MR. SHEPARD: So the next issue -- and Mr.
17 Highsmith just sort of segued into it -- is this question of
18 whether we have the responsive material from the phone, and,
19 as we pointed out in our papers, what we were given was not
20 an image of anything.

21 It's some spreadsheets, and the spreadsheets are, A,
22 redacted, for unexplained reasons, B, missing a lot of
23 responsive basic information like names of those
24 communicating the contents of the messages, and something
25 that allows us to review the attachments to the messages.

1 The Government says, "Well, we've given you these
2 spreadsheets. That's the end of the matter," but that can't
3 be right, because we know they actually accessed the entire
4 phone. We know that because CRT (phonetic) --

5 THE COURT: It's unremarkable. It's an
6 unremarkable part of examining any seized image.

7 MR. SHEPARD: No, no. They examined the entire
8 phone in order to contest our discovery request. It was not
9 just, at the beginning, they had to do it in order to get to
10 the parts they were entitled to get to. They looked at the
11 entire phone in February of this year in order to come up
12 with an argument to rebut our discovery request, and
13 that's --

14 THE COURT: I don't know -- I -- look. When
15 you're looking for information that's responsive for a
16 discovery request, even if you dispute whether you have to
17 produce it, I don't see how you could -- I mean, that's --
18 when you look at the search warrants and how it works, where
19 you have the items to be, you know, seized, the -- the items
20 to be -- the area to be searched, the items to be seized
21 pursuant to a judgment, CNR (phonetic) district, the
22 computer search warrant protocol, this is how it works, and
23 there's no other way, technically, to do it.

24 And so, then, I think the issue that becomes only --
25 and, again, the Government can't produce a partial image of

1 a phone. That doesn't really work, either. So what it does
2 is it produces what it produced. Whether that's enough -- I
3 mean, I don't understand it, but that doesn't -- that's
4 unremarkable, too, to me. The issue is, I can't really tell
5 if there's more to it.

6 I mean, in a civil litigation context, we do a PMK
7 (phonetic). You'd do a -- you'd -- you'd ask the producing
8 party about it. They'd explain it to you, and you'd figure
9 out whether there was something more. We don't have that in
10 the criminal side of it. I just don't know how to help you
11 on this, but let's just -- Mr. Highsmith's comment on just
12 the redaction issue and that it -- so I'm fine with the
13 whole "You had to look at it." I'm fine with "You extract
14 what's responsive," essentially, and you produced it. What
15 I don't understand, and it's just because it's hard to
16 understand it, what --

17 MR. HIGHSMITH: It's not my -- it's also not my
18 case. This is a totally separate case, right?

19 THE COURT: Yes.

20 MR. HIGHSMITH: So this is -- it's an SDNY case
21 and New York, in a very high-profile case.

22 THE COURT: Yes.

23 MR. HIGHSMITH: It's not -- I mean, this is --
24 there's not a defendant in that case, in our case. This is
25 a tangential case. So that's just a preamble.

1 THE COURT: Although -- although I hear you on
2 that point, and, you know, the Government's obligations -- I
3 mean, granted, it's more than Brady context. You know, you
4 have to read the SEC's notes. You can't delegate to people.

5 MR. HIGHSMITH: Understood.

6 THE COURT: Just the fact that a different
7 agency -- and if SFPD were working in concert with you,
8 you'd have to do the same thing there. So I agree it's
9 attenuated, and I don't know that SDNY's evidence makes any
10 real difference to --

11 MR. HIGHSMITH: Well, the point --

12 THE COURT: -- the obligation here, and I just
13 don't understand what --

14 MR. HIGHSMITH: The point is -- the point is this,
15 your Honor. The point is, law enforcement uses search
16 warrants for a variety of reasons. They will -- in this age
17 of huge amounts of electronic discovery, my understanding is
18 that they get the search warrant, they pull -- they pull a
19 limited amount of evidence. They create these spreadsheets,
20 and that's what they have. That's what they -- that's the
21 retained information.

22 THE COURT: Okay. Well, so there are two issues
23 here that I see, that are perhaps making it easier. If the
24 columns are missing descriptions, well, it is what it is.
25 That's one reaction. But, if these are redacted or

1 attachments aren't accessible, that's a different issue.

2 MR. HIGHSMITH: They're not going to pull -- so
3 they're not going to pull -- you get a -- your Honor knows
4 you get a warrant, and you have a certain amount of time to
5 review it. You have a certain amount of time to pull the
6 material out, and you have a certain amount of material that
7 you use, and then stuff that you leave, that you don't use.

8 So they -- my understanding -- it's very conceivable
9 that they basically extract -- and they don't extract the
10 attachments. They don't extract the stuff that's under the
11 redactions. They just pull that stuff out so they can use
12 it for the purposes of their investigation, and then that's
13 the material they've extracted.

14 THE COURT: Okay. I -- that's helpful.

15 MR. HIGHSMITH: They've not allowed to --

16 THE COURT: That's helpful --

17 MR. HIGHSMITH: -- go back.

18 THE COURT: -- but what I can do is say, if they
19 have it, they have to produce it. So I -- I think the best
20 they can do here is if they searched it, they extracted
21 things, and it's either redacted or there are attachments
22 that they actually extracted and that you can access, so
23 they did it, and they have it. That I can order. I'll
24 figure out a way to say it. I don't think I can do more
25 with this piece of it.

1 MR. HIGHSMITH: But the bottom line is we can't --
2 they can't go back into the evidence.

3 THE COURT: No, I'm not asking -- I appreciate
4 that. I agree.

5 MR. HIGHSMITH: Thank you.

6 THE COURT: Okay. Okay.

7 MR. SHEPARD: And we do understand. We do
8 request -- they should be -- they should, just like they did
9 for their own purposes, and I do want to -- because I -- I'm
10 just --

11 THE COURT: It would be -- it's just not going to
12 happen. I mean, I see it as well, but it's just not going
13 to happen, that I'm going to order the Bureau to go back
14 and, you know, redo a search warrant that's -- that was in a
15 different case, because they searched the evidence in a
16 certain way. Whatever they extracted that's responsive,
17 that's fairly within their control, is fairly produced to
18 you without redactions, AEO (phonetic), if necessary, and if
19 they have extracted attachments that aren't accessible, they
20 can provide them in an accessible format, if possible. I
21 can write an order that says that, but I'm not requiring
22 them to go back and do anything else. Okay.

23 MR. SHEPARD: I understand. I just did want to
24 make sure the Court understood. I get the point about --

25 THE COURT: It's a Rule --

1 MR. SHEPARD: -- how they -- how they start with
2 those search -- how they start with a search warrant, and
3 they've got to look at -- they've got to look at it all, and
4 then they get down to what they actually --

5 THE COURT: Whatever they took, they took, and
6 that's what I can deal with.

7 MR. SHEPARD: But -- but -- but my point is,
8 they've done more than that for their own purposes in this
9 case. So, in --

10 THE COURT: I think we're good. We're good.
11 Okay.

12 MR. SHEPARD: I just, for our own purposes --

13 THE COURT: Okay. I think you've had time,
14 because you -- it's criminal and, you know --

15 MR. SHEPARD: Okay. And --

16 THE COURT: And so I wanted to let you make your
17 argument, and I'm solid on this.

18 MR. HIGHSMITH: I disagree with that
19 characterization, for the record.

20 THE COURT: But it's okay. But --

21 MR. SHEPARD: And I don't understand. We want to
22 be a -- we believe we're entitled to it, but you're saying
23 we're --

24 THE COURT: Well, it's -- this is not civil, and
25 the Government has given you a lot, and I appreciate the

1 inclination to leave no stone -- stone unturned, and this is
2 it. That's -- that's -- that's how it's going to go. I
3 will write it -- I'll nail it to an order, but that's how
4 it's going to go.

5 MR. SHEPARD: Okay.

6 THE COURT: Okay. Next.

7 MR. SHEPARD: Okay. Next issue is the iPad.

8 THE COURT: They said that there was no iPad
9 seized.

10 MR. SHEPARD: No, they didn't say there was no
11 iPad. They said they never gained access to the iPad.

12 THE COURT: Okay.

13 MR. SHEPARD: I'm not quite sure what that means,
14 whether there was like a password issue or what, but it
15 seems like we should be able to know what that means. Was
16 the device imaged? Was it destroyed? You know, can we --
17 if it -- if it's still in existence, can we inspect it? I
18 mean, it's within the Court's order.

19 THE COURT: Well, I think -- I -- I -- I think we
20 can get clarification on what they were unable to access it,
21 and I think the same analysis applies, that if the
22 Government didn't access stuff, it can produce only things
23 that it's lawfully accessed by virtue of the search warrant
24 that authorized seizure of evidence, and if they didn't
25 seize anything, there's nothing to produce. And so, then, I

1 think we can give the clarification of what that means, and
2 you can take up your problems with Mr. Levin.

3 MR. HIGHSMITH: I think this is an easy one. The
4 Government couldn't get in. The Government hasn't reviewed
5 any of the material on there. The Government -- therefore,
6 there's nothing in its possession.

7 THE COURT: Okay. Okay.

8 MR. SHEPARD: "Couldn't get in" meaning there is
9 no image, and then -- but it still exists somewhere?

10 THE COURT: Yes. I'll get it to an order. It
11 will be fine. It's actually what Mr. Highsmith was saying.
12 They couldn't -- they couldn't access it, so they didn't do
13 any search, so they have nothing to produce, and I'll put
14 that in there. If I get it wrong, the Government has an
15 obligation to correct me, and it will be fine.

16 MR. SHEPARD: Okay.

17 THE COURT: Okay.

18 MR. SHEPARD: If it still exists, can we inspect
19 it?

20 THE COURT: No. I don't think so, no. It's Mr.
21 Levin's device, and there's -- I don't see any ground in any
22 evidence rule that any -- any discovery rule that permits
23 it. It's not -- they can't get in, and so they can't do a
24 search. I can't require them to do more. They have nothing
25 lawfully in their control to turn over to you as they did

1 with the (indiscernible) itself. So we're done. I think
2 that's the answer to that.

3 Okay. Next issue.

4 MR. SHEPARD: Then we have the issues of
5 attachment B for the iPhone and the iPad searches, and
6 whether that should be produced, those should be produced,
7 with an attorney's eyes --

8 MR. HIGHSMITH: We'd like a protective order.
9 It's a -- it's a very sensitive case.

10 THE COURT: Okay.

11 MR. HIGHSMITH: It's not even -- again, it's an
12 SDNY case, high-profile case, lots of individuals named in
13 the warrant who were never publicly charged. It should be
14 in these protections.

15 THE COURT: Okay. So they're asking for a
16 protective order.

17 MR. SHEPARD: We -- we -- there is -- we went
18 through this.

19 THE COURT: So this is an issue that's not --
20 protective order, an EO --

21 MR. SHEPARD: They're -- they're --

22 THE COURT: That's fine, pursuant to -- pursuant
23 to a protective order.

24 MR. SHEPARD: Your Honor, there -- there is a
25 protective order. We went through this exact same issue

1 when you ordered the production of the Levin devices. The
2 Government said, "Attorneys' eyes only," and we convinced
3 you that was inappropriate in this case.

4 THE COURT: Well, you said, "Attorneys' eyes
5 only," so I went with it, because you proposed it.

6 MR. SHEPARD: No, I wasn't -- I wasn't proposing
7 it.

8 THE COURT: Okay.

9 MR. SHEPARD: I was describing the questions --

10 THE COURT: Let's start -- let's start there, and
11 I'll go look back at my previous orders, but I -- then,
12 depending -- you guys can talk about possible redactions
13 that may or may not be appropriate in the context of
14 (indiscernible), but let's get you the attachment B to start
15 with, and we'll work it out.

16 MR. SHEPARD: And then we can come back as it's
17 produced.

18 THE COURT: Well, it's -- it's -- it's -- you
19 know, so much of this stuff is never going to be of any use,
20 and so that's why you just kick -- you just kick it down the
21 road, and it's like -- it's like the Rule 17(c) subpoenas,
22 which is, you just don't worry about it, because none of it
23 is going to come in in trial anyway, but you want to lay
24 eyes on it to make sure that's the case. So why worry about
25 it now?

1 MR. SHEPARD: I worry about it now because my
2 client is very helpful and very active.

3 THE COURT: No, I appreciate that.

4 MR. SHEPARD: He's complied with all the
5 protective orders, through all the things --

6 THE COURT: And when in implicates in the
7 investigation in another district, it doesn't mean that you
8 necessarily get access to everything to share with your
9 client because of it, because of the issues that attach to
10 that. Redactions might be appropriate, the Government can
11 consider whether it can give two copies, an unredacted
12 version for you, a redacted version able -- that you're able
13 to share with the client, with any issues, with what that
14 looks like, you can bring it back to me. You know I'm
15 always happy to see you.

16 MR. SHEPARD: Okay. And I'm always happy to be
17 here, even if I don't get everything I want, but I --

18 THE COURT: You're given a lot, given the kind of
19 discovery --

20 MR. SHEPARD: I -- I -- I assume that covers both
21 the attachment B for the iPhone and the iPad.

22 MR. HIGHSMITH: I'll hand over both as long as
23 you -- you -- or as long as the Court orders it attorneys'
24 eyes only --

25 THE COURT: Yes.

1 MR. HIGHSMITH: -- I'm very happy to produce
2 those.

3 THE COURT: iPad, iPhone. Okay. Was that the
4 last issue?

5 MR. SHEPARD: I think so.

6 THE COURT: I have a big calendar, so -- okay.
7 Perfect. I'll take the matter under submission, and I'll
8 issue an order as soon as I can. Thank you. Nice to see
9 you. And we'll call SEC versus Musk now, which is the next
10 Government case.

11 UNIDENTIFIED SPEAKER: Your Honor, sorry to
12 interrupt, but is it possible for you to turn on your
13 microphone and to --

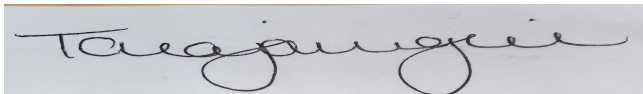
14 THE COURT: No, the microphone is on. So this is
15 the -- they -- this is, unfortunately, the -- what attaches
16 to -- you're welcome to sit in the jury box if you'd like.

17 (Proceedings concluded at 10:38 a.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A rectangular box containing a handwritten signature in cursive script, which appears to read "Tara Jungi".

Echo Reporting, Inc., Transcriber

Wednesday, December 20, 2023